other than that which is incidental to a general regulation of the class of property in which they are included. This reiteration of the principles of unjust discrimination cannot affect the regulation of property, itself forming a recognized class. It seems clear, therefore, that the decision should not be taken as indicative of an attitude on the part of the federal courts adverse to the provision found generally in our states requiring notes given for patent rights to contain an indication of that fact, the validity of which has so divided the State tribunals.

LACHES AS A GROUND FOR AFFIRMATIVE RELIEF.—In explanation of the doctrine of laches it has frequently been said that "nothing can call forth the court of chancery to action but conscience, good faith and reasonable diligence." *Smith* v. *Clay* (1767) Amb. 645; *Piatt* v. *Vattier* (1835) 9 Pet. 405, 417. This statement, in so far as it creates the impression that laches may arise from mere lapse of time, *Tennyery* v. *Ransom* (1898) 170 Mass. 303, as witnessed in the view that the reason beneath the doctrine is equity's abhorrence of delay, *Wiggin* v. *Machine Co.* (1894) 68 N. H. 14, is inadequate. *Oliver* v. *Piatt* (1845) 3 How. 333; *Boyce* v. *Dantz* (1874) 29 Mich. 146. Laches, properly, is found only in cases where the defendant has been prejudiced, *Gunton* v. *Carroll* (1879) 101 U. S. 426; *Att'y Gen'l* v. *Algonquin Club* (1891) 153 Mass. 447, as by incurring expenditure, *Hulme* v. *Shreve* (1837) 4 N. J. Eq. 115, to the plaintiff's knowledge, *Baltimore etc. Ry. Co.* v. *Strauss* (1872) 37 Md. 237, or by the occurrence of events which destroy or impair evidence. *MacKnight* v. *Taylor* (1843) 1 How. 161; *Loomis* v. *Brush* (1877) 36 Mich. 40. And in the majority of cases which adopt mere delay as sufficient some such element is found to exist. See *Bassett* v. *Company* (1867) 47 N. H. 426. Where not found, the discretion of the court is almost universally restricted to seeking analogies in the statute of limitations, *Ferson* v. *Sanger* (1845) Fed. Cas. No. 4,751, although some courts seem to have adopted a ten year rule for such cases. *Flemming* v. *Reed* (1872) 37 Tex. 152. Both these practices rest upon the probability arising from long lapse of time that a claim has been settled and evidence of such settlement lost. *Loomis* v. *Brush*, supra. So, when circumstances are shown which render it improbable that such evidence ever existed, the court will refuse to apply strict limitations not expressly binding upon it, and will grant its relief beyond such periods. *Glasscock* v. *Nelson* (1861) 26 Tex. 150. It is, therefore, evident that the true touchstone of the doctrine of laches is to be found not in the abhorrence of delay but in the fear of doing injustice.

But a discovery of the motive underlying the doctrine leaves unsettled the more interesting question of the extent to which it may properly be used. In a recent case a court of equity has held that failure by a ward to seek an account for nine years and until the death of his guardian, was ground for enjoining suit against the estate of the bond surety, the guardian's representatives being unable to account for lack of evidence. The result was reached on the ground of the laches of the plaintiff at law, no fraud being shown. *Clark* v. *Chase* (Me. 1906) 64 Atl. 493. This raises squarely the question whether equity will interfere with a party's

legal rights because he has delayed in availing himself of them. The existence of statutes of limitation, though it seems to minimize the necessity for such interference, is by no means conclusive against it. Equity's independence of limitation periods where laches occur leaves still to be determined whether there is anything underlying the doctrine of laches which will justify assertive action by the court.

The general view that some detriment following the delay is necessary to call the rule of laches into play, may seem to point to an affirmative jurisdiction analogous to that arising in cases of fraud. But such an analogy finds little support in the cases. Laches has been employed in the past not as a basis of granting affirmative relief, but as a reason for refusing it. See *Wilson* v. *Wilson* (1902) 41 Ore. 459; 1 Pomeroy, Eq. Rem. § 21, *n.* The courts have refused to apply it against legal rights, *Ormsby* v. *Company* (1874) 56 N. Y. 63; *Brush* v. *Railway Co.* (N. Y. 1890) 26 Abb. N. C. 73, and, when applying it in equity to a case giving rise to a legal cause of action also, have expressly left the party to his remedy at law. *Telegraph Co.* v. *Judkins* (1883) 75 Ala. 428; *Kincaid* v. *Gas Co.* (1890) 124 Ind. 577. In theory, laches is built up not on the active breach of a duty but on the passive failure to pursue a right. In other words, equity declines to grant the remedies with which it is invested for the purpose of doing justice, to a party whose neglect has made possible such a situation as to render it doubtful that justice will really be done. *Harrison* v. *Gibson* (1873) 23 Gratt. 212. But unless such party's neglect can be looked upon as a breach of duty, not merely making possible but *causing* or inducing the detrimental position of the other party, laches must be held to lack the elements which justify affirmative relief in the case of fraud. It is believed that equity has not reached the point of holding a failure to sue to be a breach of duty. Nor can such failure be looked upon as causing or inducing such occurrences as the death of the other party's witnesses or the accidental loss of his evidence. Yet either of these is a sufficiently detrimental change in the situation to justify an application of the doctrine of laches. *Foster* v. *Mansfield* (1892) 146 U. S. 88,100; *Whitney* v. *Fox* (1896) 166 U. S. 637. The granting of affirmative relief on the sole ground of laches must, therefore, be considered as based upon an unjustifiable assumption of jurisdiction.

ENFORCEMENT OF FOREIGN DECREES OF ALIMONY.—An action at law lies to recover installments of alimony on a sister state decree, which are due at the time of the institution of the suit, *Bullock* v. *Bullock* (1895) 57 N. J. L. 508; *Dow* v. *Blake* (1893) 148 Ill. 76; *Moore* v. *Moore* (N. Y. 1903) 40 Misc. 162, and a bill will not be entertained in equity, *Bennett* v. *Bennett* (1901) 63 N. J. Eq. 306; *Wood* v. *Wood* (N. Y. 1894) 7 Misc. 579, except where there is no adequate remedy at law, as where husband and wife may not sue each other at law. *VanOrden* v. *VanOrden* (1899) 58 N. J. Eq. 545. The case of *Barber* v. *Barber* (1858) 21 How. 582, affirming the decree of the lower court in the District of Wisconsin, allowing recovery on a bill to enforce a decree for alimony rendered in a New York court, is sustainable on the last point, but to the extent to which it held that equity will take jurisdiction to enforce a foreign decree